



One recognized standard remains for environmental consulting: ASTM International

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When preparing a phase one environmental site assessment (ESA), the industry has followed the American Society of Testing Materials (ASTM) International standards since 1994. This volunteer standard was designed to help outline the parameters of what all consultants should be reporting on. In 2005, ASTM International introduced the first standard designed to meet the definition of the All Appropriate Inquiry (AAI) rule. This "rule" was enacted by congress and had a five-year sunset clause meaning the standard needed to be re-authorized or simply go away. With no other recognized standard available, it was crucial for the ASTM International committee to review and revise that "05" standard. This was done in the fall of 2013 with the release of the ASTM International E-1527-13 standard. The 13 representing the year the standard was released.

What happened next took many people by surprise. On December 30th, 2013 the standard was ratified and approved in Washington, D.C. However, the prior standard was allowed to exist and also be recognized as meeting the AAI rule previously adopted. So after years of working discussion and revisions, to include the input of consultants, attorneys and a host of others involved in the process nationwide, it was decided that the implemented changes did not need to be adhered to by and simply following the existing 05 standard was acceptable. The new 13 standard carried a moniker with it of being a "clarifying document" as the ASTM International committee realized the intent of the prior standards that was being misunderstood in several key sections. This obviously caused much confusion within the environmental consulting industry and their client base. Explaining one government approved standard can be challenging enough, yet consultants were now tasked with explaining that two existed and could be relied on equally.

The ASTM International group quickly lobbied their objections to the dual acceptance and petitioned the EPA to re-visit the decision. Ironically the government agency that created this situation, quickly adopted the new standard as the required one for all government agencies that rely on environmental due diligence reports. This included Freddie Mac, Fannie Mae and Small Business Administration (SBA) loans. In October of 2014, the EPA did capitulate and announced the sun-setting of the 05 standard which will take effect on October 5, 2015. So after seven years from the first committee meeting held by ASTM, this fall will mark the first time that there is one standard to meet the AAI rule.

As I write the article, I celebrate 25 years of environmental consulting which pre-dates any ASTM International standard. The key to good consulting has always been understanding the standards as they have been implemented and how to deliver a quality report to the client. In the early days, consultants were tasked with evaluating if whether a property met the definition of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and may be included on that listing. If you were confident the property would not warrant inclusion as a potential

CERCLA site, the phase one was a good phase one. Today, buyers of commercial real estate and lenders requiring phase one ESA's entrust their consultants to guide them in many more ways beyond possible inclusion on that list. From old buried gasoline tanks, to historic dry-cleaning operations (both on-site and at neighboring properties), consultants are tasked with discovering if these conditions exist and how they may have impacted the property. Just because a site does not warrant a CERCLA listing does not mean there are no environmental conditions present or a financial cost to cure. Many times the financial obligation to address environmental impacts can be significant for a potential buyer. Lenders are also concerned about the cost to address as they become the stewards of environmentally challenged sites during a foreclosure until a site can be cleaned or sold to an investor who is not scared off by environmental challenges. However, this niche type of buyer is looking for reduction in the cost of the property further exacerbating the lenders financial position. Consultants of today accomplish this by using all of the ASTM International tools outlined in the most current standard, advances in technology such as the Internet as well as good old detective work.

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